

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JAMES HEALY, on behalf of himself and all
11 others similarly situated,

12 Movant,

13 v.

14 CVS HEALTH CORPORATION,

15 Respondent.

16 CASE NO. MC22-0065-JCC

17 ORDER

18 This matter comes before the Court on James Healy's motion (Dkt. No. 13) to compel
19 CVS Health Corporation's ("CVS") compliance with a third-party subpoena seeking testimony
20 supporting Mr. Healy's suit in a certified class action, *Healy v. Milliman Inc.*, Case No. C20-
21 1473-JCC (W.D. Wash. 2021) ("Certified Suit"). Having thoroughly considered the briefing and
22 relevant record, the Court GRANTS the motion (Dkt. No. 13) for the reasons explained herein.

23 Mr. Healy contends that Milliman, Inc. violated the Fair Credit Reporting Act ("FCRA"),
24 15 U.S.C. § 1681 *et seq.*, when it (a) sold a report containing Mr. Healy's erroneous medical and
25 prescription history to an insurer and (b) then shifted the burden to correct the report to Mr.
26 Healy. (*See* Certified Suit Dkt. No. 1.) He further contends this experience was not unique. (*Id.*)
Following briefing on the issue, the Court granted class certification. (*See id.* at Dkt. No. 127.)
According to Mr. Healy, CVS provided data to Milliman, which it used to compile Mr. Healy's

1 erroneous report. (See *id.* at Dkt No. 102.) Therefore, in order to support claims against
 2 Milliman, Mr. Healy seeks testimony from CVS regarding its dealings with Milliman. (See Dkt.
 3 No. 13-2 at 2–8 (third-party subpoena).) Upon receipt of Mr. Healy’s subpoena, CVS objected
 4 on myriad grounds¹ and, since then, has refused to make a CVS representative available for
 5 deposition. (See Dkt. No. 13-3 at 19–28.)

6 Following unsuccessful e-mail communications and meet and confers, Mr. Healy moved
 7 the District Court for the Eastern District of Pennsylvania to compel enforcement of the
 8 subpoena. *Healy v. CVS Health Corporation*, Case No. MC21-0090-RBS, Dkt. No. 1 (E.D. PA
 9 2021). That Court transferred the matter to this Court, (*see id.* at Dkt. No. 10), where Mr. Healy
 10 has renewed his motion. (See Dkt. No. 13.) In opposing, CVS argues that the testimony Mr.
 11 Healy seeks is overly broad and burdensome. (Dkt. No. 23 at 7–13.) CVS also contends the
 12 testimony is irrelevant, given the classes as ultimately certified by this Court. (*Id.*) In addition,
 13 according to CVS, at least some of what Mr. Healy seeks is either proprietary or protected health
 14 information and cannot be disclosed. (*Id.*) Finally, CVS posits that Mr. Healy could more readily
 15 obtain other information directly from Milliman; therefore, it is improper to seek this information
 16 from a non-party. (*Id.*) For the reasons described below, the Court does not find CVS’s
 17 arguments persuasive.

18 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
 19 party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).
 20 Relevant information is “any matter that bears on, or that reasonably could lead to other matter
 21 that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*,
 22 437 U.S. 340, 351 (1978). Proportionality is a matter of “the importance of the issues at stake in

23 ¹ Those grounds included the following: the topics proposed are vague, overbroad,
 24 unduly burdensome, and not reasonably calculated to lead to the discovery of admissible
 25 evidence; the information sought is not proportional to the needs of the case; the cost required to
 26 prepare a deponent would greatly outweigh the benefit to Mr. Healy from the information he
 seeks; and CVS cannot provide much of the information sought, given its confidential and/or
 proprietary nature. (See Dkt. No. 13-3 at 7–16.)

1 the action, the amount in controversy, the parties' relative access to relevant information, the
 2 parties' resources, the importance of the discovery in resolving the issues, and whether the
 3 burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.
 4 26(b)(1).

5 The party seeking to quash or modify a subpoena bears the burden of showing that the
 6 subpoena should be quashed or modified. *Lillywhite v. AECOM*, 2020 WL 4501596, slip op. at 3
 7 (W.D. Wash. 2020) (citing *Goodman v. United States*, 369 F.2d 166, 169 (9th Cir. 1966)).
 8 However, a party or attorney who issues a Rule 45 subpoena that imposes an undue burden or
 9 expense on the recipient may be subject to sanctions. Fed. R. Civ. P. 45(d)(1). And, to the extent
 10 that a nonparty's compliance costs are substantial, the Court may award discovery costs to that
 11 nonparty. *U.S. v. Columbia Broad. System, Inc.*, 666 F.2d 364, 372 (9th Cir. 1982)

12 Mr. Healy seeks testimony on the following topics: (1) CVS's understanding of its
 13 contract to supply data to Milliman, (2) the server CVS's uses to store and transmit data to
 14 Milliman, (3) the process CVS uses to supply data to Milliman, (4) the source of CVS's data, (5)
 15 the process it uses to obtain that data, (6) CVS's policies and practices regarding FCRA disputes,
 16 (7) details regarding CVS's system, (8) the manner in which CVS's systems interact with
 17 Milliman's, (9) CVS's maintenance of medical data, and (10) CVS's maintenance of prescription
 18 records. (See Dkt. No. 13-2 at 7–8.)

19 This information is relevant to Mr. Healy's claims, is proportional to the needs of his
 20 certified case, is not overbroad, and does not appear to be within Milliman's control.
 21 Undoubtedly, some of the information sought would be proprietary. But that is not an
 22 appropriate basis to oppose testimony on the topic. The protective order the Court previously
 23 entered provides a process to designate certain testimony as confidential. (See Certified Suit Dkt.
 24 No. 28 at 7.) This is more than adequate to protects CVS's information from unwarranted
 25 disclosure.

26 Finally, the Court does not view the requisite preparation that a deposition on these topics

1 would require, or the time and expense required in actually testifying, to be unduly burdensome.
2 If, after the deposition is complete, CVS feels otherwise, it may move for fee recovery. But this
3 is not a basis to oppose or quash the current subpoena.

4 For the foregoing reasons, the Court GRANTS Mr. Healy's motion (Dkt. No. 13). CVS is
5 ORDERED to produce a representative to be deposed on the topics described in Mr. Healy's
6 subpoena (Dkt. No. 13-2 at 2-8) within 45 days of this Order.

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8 DATED this 25th day of August 2022.

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12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
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